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GERLING AMERICA INSURANCE COMPANY  
6

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9

10 FIREMAN'S FUND INSURANCE )  
COMPANY, a foreign corporation a/s/o )  
11 BASIC RESOURCES, INC. and GEORGE )  
REED, INC., a foreign corporation, )

12 Plaintiff, )

13 vs. )

14 GERLING AMERICA INSURANCE )  
COMPANY, a foreign corporation, )  
15

16 Defendant. )  
17

CASE NO.: 3:07-cv-06302-CRB (EMC)

**DECLARATION OF TINO X. DO IN  
SUPPORT OF DEFENDANT GERLING  
AMERICA INSURANCE COMPANY'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL**

Date: August 6, 2008  
Time: 10:30 a.m.  
Courtroom: C

18  
19 I, Tino X. Do, hereby declare as follows:

20 1. I am an attorney licensed to practice in all the courts in the State of California and am an  
21 associate attorney with Barger & Wolen LLP, attorneys for Defendant Gerling America Insurance  
22 Company. I make this declaration in support of Defendant Gerling America Insurance Company's  
23 Opposition to Plaintiff's Motion to Compel. I have personal knowledge of the facts declared herein  
24 and if called upon to testify can and will testify competently thereto.

25 2. On June 24, 2008, I drafted a letter to Jon D. Derrevere, counsel for Plaintiff Fireman's  
26 Fund Insurance Company ("FFIC") requesting FFIC to stipulate to the entry of Gerling's Second  
27 Amended Answer that withdraws the affirmative defense of "Exhaustion of Policy Limits."

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Declaration of Tino X. Do in Support of Defendant Gerling's  
Opposition to Plaintiff's Motion to Compel  
3:07-cv-06302-CRB

1 Attached hereto as Exhibit 1 is a true and correct copy of the June 24, 2008 letter.

2 3. On June 25, 2008, I received a letter from Mr. Derrevere declining to enter into the  
3 proposed stipulation. Attached hereto as Exhibit 2 is a true and correct copy of the June 25, 2008  
4 letter.

5 4. On June 26, 2008, Gerling filed its Motion for Leave of the Court to File its Second  
6 Amended Answer that did not contain the "Exhaustion of Policy Limits" affirmative defense.  
7 Attached hereto as Exhibit 3 is a true and correct copy of Gerling's Motion for Leave of Court to  
8 File Second Amended Answer.

9 5. On July 11, 2008 the Court granted Gerling's Motion for Leave to File Second Amended  
10 Answer. Attached hereto as Exhibit 4 is a true and correct copy of the Court's July 11, 2008 Order.

11 6. On June 5, 2008, I drafted a letter to Mr. Derrevere to inform him that the statement  
12 contained in the May 14, 2007 letter regarding Gerling's prior payments for claims against Gencor  
13 was incorrect. Attached hereto as Exhibit 5 is a true and correct copy of the June 5, 2008 letter.

14 I declare under penalty of perjury under the laws of the United States that the foregoing  
15 statements are true and correct.

16 Executed on July 16, 2008 in San Francisco, California.

17  
18 /s/ Tino X. Do  
19 TINO X. DO  
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28 Declaration of Tino X. Do in Support of Defendant Gerling's  
Opposition to Plaintiff's Motion to Compel  
3:07-cv-06302-CRB